



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 458-2500

Dick Durbin, Administrator

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July 26, 1993

Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

MBJ
RQ-00582-DM
FILE # AL-21443-9

I.D.# 21443

ATTENTION: Ms. Madeleine B. Johnson
Chair, Opinion Committee

RQ-582

Dear General Morales:

The Texas Alcoholic Beverage Commission respectfully requests your opinion on the following matters:

- 1). Whether a holder of a retail license or permit authorizing the sale and on- or off-premise consumption of alcoholic beverages may still possess a firearm for the purpose of self defense in light of the new amendments, §61.71(f) and §11.61(e), Texas Alcoholic Beverage Code, effective September 1, 1993, and not risk cancellation of his license or permit?
- 2). Whether a holder of a retail license or permit authorizing the sale and on- or off-premise consumption of alcoholic beverages may continue to sell firearms in a building in which there is a licensed premises and not jeopardize his license or permit after §61.71(f) and §11.61(e), Texas Alcoholic Beverage Code, become effective September 1, 1993?

Amendments to the Texas Alcoholic Beverage Code, Section 61.71(f) and §11.61(e), passed this session of the Legislature and scheduled to become effective September 1, 1993, state in pertinent part:

The commission or administrator shall cancel an original or renewal dealer's on-premises or off-premises license or permit if it is found, after notice and hearing, that the licensee or permittee knowingly allowed a person to possess a firearm in a building on the licensed premises. This subsection does not apply to a person:

(1) who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) the person is engaged in the performance of the

person's duties as a security officer;

(B) the person is wearing a distinctive uniform; and

(C) the weapon is in plain view; or

(2) who is a peace officer.

Prior to this amendment of the Texas Alcoholic Beverage Code, the controlling statutes were the Texas Penal Code, §§46.01-46.03.

§46.02 in pertinent part states:

"§46.02. Unlawful Carrying Weapons

(a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages."

§46.03 in pertinent part states:

"§46.03. Non-Applicable

(a) The provisions of Section 46.02 of this code do not apply to a person:

(1) in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution;

(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event he must comply with Subdivision (5) of this subsection;"

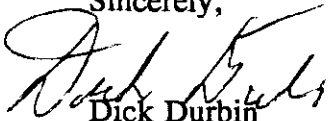
It would appear that §61.71(f) and §11.61(e), Texas Alcoholic Beverage Code, might override the exceptions and limitations defined in the Penal Code if one applied the provisions of the Code Construction Act. Senator Chris Harris, Arlington, who carried the legislation in question, has stated clearly that it was not his intent to prevent all owners from maintaining a firearm for their protection. As of this moment we have not yet been able to locate any tapes or records of committee meetings, but are still endeavoring to do so. Because of the urgency of this matter we are submitting this letter request and will in the next two weeks submit our brief. In addition we will submit a list of persons who may also be interested in briefing this question.

If you need any information please call Gayle Gordon or Randy Yarbrough at 458-2500.

July 26, 1993

Thank you for your attention to this matter.

Sincerely,



Dick Durbin

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TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 458-2500

Jeannene Fox, Acting Administrator

September 9, 1993

SEP 13

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

ATTENTION: Ms. Toya Cook

Dear General Morales:

FILE # 19-00582-dm
I.D.# 22261

Re: RQ 582

The Texas Alcoholic Beverage Commission would like to amend its request for an opinion designated RQ 582 by adding a variation to Question 2, which we designate 2a. The question is as follows:

- 2a). Whether a holder of a retail license or permit authorizing the sale and on- or off-premise consumption of the alcoholic beverages may continue to sell such alcoholic beverages when another entity sells firearms in an area separate from the leased premises but within the same building and not jeopardize its license or permit after §61.71(f) and §11.1(e), Texas Alcoholic Beverage Code (the "Code) become effective on September 1, 1993?

The variation in Question 2a turns on the fact that the legal entity selling guns and the entity selling liquor housed in the same building are different.

Sincerely,


Jeannene Fox

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